

**FILED****BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements.

Rulemaking 16-02-007
(Filed February 11, 2016)

ADMINISTRATIVE LAW JUDGE'S RULING REJECTING DEFENDERS OF WILDLIFE'S NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION

Customer (party intending to claim intervenor compensation): Defenders of Wildlife

Assigned Commissioner: Liane M. Randolph

Administrative Law Judge: Julie A. Fitch

PART I: PROCEDURAL ISSUES
(Completed by the party intending to claim intervenor compensation)

A. Status as "customer" (see Pub. Util. Code § 1802(b)):¹ The party claims "customer" status because the party is (check one):	Applies (check)
1. A Category 1 customer is an actual customer whose self-interest in the proceeding arises primarily from his/her role as a customer of the utility and, at the same time, the customer must represent the broader interests of at least some other customers. In addition to describing your own interest in the proceeding you must show how your participation goes beyond just your own self-interest and will benefit other customers.	<input type="checkbox"/>
2. A Category 2 customer is a representative who has been authorized by actual customers to represent them. Category 2 involves a more formal arrangement where a customer or a group of customers selects a more skilled person to represent the customer's views in a proceeding. A customer or group of customers may also form or authorize a group to represent them, and the group, in turn, may authorize a representative such as an attorney to represent the group. A representative authorized by a customer must identify the residential customer(s) being represented and provide authorization from at least one customer. See D.98-04-059 at 30.	<input type="checkbox"/>

¹ All statutory references are to California Public Utilities Code unless indicated otherwise.

<p>3. A Category 3 customer is a formally organized group authorized, by its articles of incorporation or bylaws to represent the interests of residential customers or small commercial customers receiving bundled electric service from an electrical corporation.² Certain environmental groups that represent residential customers with concerns for the environment may also qualify as Category 3 customers, even if the above requirement is not specifically met in the articles or bylaws. <i>See</i> D.98-04-059, footnote at 3.</p>	<input checked="" type="checkbox"/>
<p>The party's explanation of its customer status must include the percentage of the intervenors members who are residential ratepayers or the percentage of the intervenors members who are customers receiving bundled electric service from an electrical corporation, and must include supporting documentation: (i.e., articles of incorporation or bylaws).</p> <p>Defenders of Wildlife (Defenders) is a non-profit membership organization with more than 200,000 California members and activists, over 185,000 of which are residential ratepayers within the IOU service areas. Defenders is dedicated to protecting wild animals and plants in their natural communities. Defenders' Bylaws state the organization's purpose:</p> <p>Defenders of Wildlife is a national, nonprofit organization dedicated to preserving wildlife and promoting humane treatment of wild animals, emphasizing appreciation and protection for all species in their ecological role within the natural environment. Through communication, education, and responsive action, Defenders of Wildlife works to improve public attitudes and policies toward wildlife and its habitat.</p> <p>Defenders has been actively working in California since 1979. As part of our mission, Defenders works to fight climate change, including advocating increasing the development of reliable and sustainable renewable energy in California. Since 2007, Defenders has been representing our members and activist California rate-payers who are concerned about the environment and desire development of renewable energy resources which respect, protect, and preserve our wildlife and its habitat. To that end, Defenders advocates for the development and implementation of regulatory policies which encourage the utility industry's delivery of cost-effective and environmentally sustainable renewable energy resources and discourages unnecessary new generating resources that are excessively costly and environmentally damaging.</p> <p>Defenders has used our policy driven expertise to actively engage with governmental agencies, policy makers and stakeholders in numerous planning and permitting efforts</p>	

² Intervenors representing either a group of residential customers or small commercial customers who receive bundled electric service from an electrical corporation, must indicate in Part I, Section A, Item #4 of this form, the percentage of their members who are residential customers or the percentage of their members who receive bundled electric service from an electrical corporation. The NOI may be rejected if this information is omitted.

including

- Bureau of Land Management’s Solar Programmatic Environmental Impact Statement
- Desert Renewable Energy Conservation Plan
- CA County Planning Director’s Solar Energy Facility Siting Guideline
- Renewable Energy Transmission Initiative
- California Energy Commission’s Integrated Energy Policy Reports
- Electric Program Investment Charge
- Renewables Portfolio Standards Proceeding
- Restoration Energy Design Project

In addition, we have long-standing work at the individual renewable energy project and transmission line level, on both public and private lands, to minimize impacts to wildlife and ecosystems. As a result of our work Defenders has become an established leader with respect to public policy, wildlife protection, and coalition building. In this role, Defenders employs science, advocacy, public education and participation, media, litigation, and proactive on-the-ground solutions in order to prevent the extinction of species, associated loss of biological diversity, and habitat alteration and destruction.

In 2012 Defenders released Smart from the Start: Responsible Renewable Energy Development in the Southern San Joaquin Valley which analyzes current opportunities and constraints for least cost/best fit renewable energy development on private lands in the San Joaquin Valley and provides a suite of recommended policies and implementation actions to facilitate improved renewable energy development in that region which are equally applicable statewide. Many of these recommendations were included in the California Energy Commission’s 2012 Integrated Energy Policy Report update. Defenders is a sought after expert on Smart from the Start renewable energy siting on private lands.

Defenders communicates regularly with our donors, supporters and allied organizations about our work on renewable energy issues with governmental and regulatory agencies, including our work at the Commission via direct outreach and social media.

In D. 98-04-059, page 29, footnote 14, the Commission reaffirmed its “previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers.” The Commission explained that “With respect to environmental groups, we have concluded they were eligible in the past with the understanding that they represent customers whose environmental interests include the concern that, e.g., regulatory policies encourage the adoption of all cost-effective conservation measures and discourage unnecessary new generating resources that are expensive and environmentally damaging. (D.88-04-066, mimeo, at 3.) They represent customers who have a concern for the environment which distinguishes their interests from the interests represented by

Commission staff, for example.” Consistent with this articulation, Defenders represents customers who are concerned about California’s environment and strongly support the use of engagement and public policy to find solutions that facilitate the development of renewable energy in a manner that protects wildlife and preserves high value wildlife habitat across California’s unique landscapes. This distinguishes Defenders interests from the interests represented by other consumer and environmental advocates who have intervened in this case.	
Defenders has no direct economic interest in the outcomes of this proceeding.	
Do you have any direct economic interest in outcomes of the proceeding? ³	
Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>	
If “Yes”, explain:	
B. Conflict of Interest (§ 1802.3)	Check
1. Is the customer a representative of a group representing the interests of small commercial customers who receive bundled electric service from an electrical corporation?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. If the answer to the above question is “Yes”, does the customer have a conflict arising from prior representation before the Commission?	<input type="checkbox"/> Yes <input type="checkbox"/> No
C. Timely Filing of Notice of Intent (NOI) (§ 1804(a)(1)):	Check
1. Is the party’s NOI filed within 30 days after a Prehearing Conference? Date of Prehearing Conference: 4/26/2016	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Is the party’s NOI filed at another time (for example, because no Prehearing Conference was held, the proceeding will take less than 30 days, the schedule did not reasonably allow parties to identify issues within the timeframe normally permitted, or new issues have emerged)?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2a. The party’s description of the reasons for filing its NOI at this other time:	
Due to a proliferation of proceedings on similar and related topics at the time of this prehearing conference, and due to organizational staffing limitations, it was not possible to fully cover all renewable energy and land use related proceedings simultaneously. The organization hired contract staff as quickly as possible, and the new staff is filing this form at its earliest opportunity upon onboarding.	
2b. The party’s information on the proceeding number, date, and decision number for any Commission decision, Commissioner ruling, Administrative Law Judge’s ruling, or other document authorizing the filing of NOI at that other time:	

³ See Rule 17.1(e).

PART II: SCOPE OF ANTICIPATED PARTICIPATION
(Completed by the party intending to claim intervenor compensation)

A. Planned Participation (§ 1804(a)(2)(A)(i)):

The party's statement of the issues on which it plans to participate:

Defenders expects to participate in this proceeding on issues identified in the February 11, 2016 Ruling, particularly those related to several new proposals offered to refine the Integrated Resource Planning Framework, as well as to participate actively in other issues to be addressed going forward as identified by the Commission for this proceeding. We have and will continue to submit comments and reply comments as appropriate, and provide information to Commission staff as requested. Should hearings or workshops be further ordered, Defenders reserves the opportunity to participate in them as best benefits the organization's interests.

The party's explanation of how it plans to avoid duplication of effort with other parties:

The interests represented by Defenders are unique and are not adequately represented by other parties that have intervened in this proceeding. Defenders is the only conservation organization in this proceeding with extensive understanding of the California Endangered Species/Federal Endangered Species laws and processes. That knowledge coupled with our active engagement in local land use planning and permitting for renewable energy projects and transmission facilities has been used to foster Least Cost/Best Fit renewable energy siting on both public and private lands, which minimizes impacts to special status wildlife species and their ecosystems. Therefore, Defenders' unique experience and understanding of the complexities of endangered species law, land use planning, CEQA/NEPA compliance, and environmental permitting will result in important recommendations to the Least Cost/Best Fit analysis with minimal duplication of the positions, rationales, and recommendations brought forth by the other environmental advocates.

The party's description of the nature and extent of the party's planned participation in this proceeding (as far as it is possible to describe on the date this NOI is filed).

At this time, Defenders expects to actively participate on the following issues:

- SB 350 Integrated Resource Planning Framework
- Modeling Approaches
- GHG Emissions Accounting
- Resource Valuation and/or Selection Methodology
- Procurement Oversight and Rules
- Section 454.5 IOU Bundled Plans
- Comments and reply comments on issues identified in the Rulemaking and subsequently.
- Comments, reply comments, and advocacy related to Proposed Decisions and other CPUC documents.

B. The party's itemized estimate of the compensation that the party expects to request, based on the anticipated duration of the proceeding (§ 1804(a)(2)(A)(ii)):				
Item	Hours	Rate \$	Total \$	#
ATTORNEY, EXPERT, AND ADVOCATE FEES				
Kim Delfino	100	290	\$29000	
Jeff Aardahl	50	290	\$14500	
Kate Kelly	100	290	\$29000	
Emily Leslie	100	150	\$15000	
Subtotal: \$87500				
COSTS				
Travel costs for attending meetings			\$2,000	
Subtotal: \$2,000				
TOTAL ESTIMATE: \$89,500				
Estimated Budget by Issues:				

PART III: SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP
(Completed by party intending to claim intervenor compensation)

A. The party claims "significant financial hardship" for its Intervenor Compensation Claim in this proceeding on the following basis:	Applies (check)
1. "[T]he customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation" (§ 1802(g)); or	<input type="checkbox"/>
2. "[I]n the case of a group or organization, the economic interest of the Individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding" (§ 1802(g)).	<input checked="" type="checkbox"/>
3. A § 1802(g) finding of significant financial hardship in another proceeding, made within one year prior to the commencement of this proceeding, created a rebuttable presumption in this proceeding (§ 1804(b)(1)).	<input type="checkbox"/>
Commission's finding of significant financial hardship made in proceeding number:	
Date of Administrative Law Judge's Ruling (or CPUC Decision) in which the finding of significant financial hardship was made:	
B. The party's explanation of the factual basis for its claim of "significant financial hardship" (§ 1802(g)) (necessary documentation, if warranted, is attached to the NOI:	
Defenders estimates its cost of participation in this proceeding will be about \$89,500. Defenders' membership in the service territories of California's investor-owned utilities, as indicated above, is 185,000±. Most members are paying dues of about \$20/year. The vast majority of our members are residential customers. Assuming an average electric bill of \$1,200 annually, this is far less than the anticipated cost of participation. The economic interest of the average member is small in comparison to the costs of effective participation in the proceeding. It is unlikely that the average Defenders member will see financial benefits that exceed the costs of the organization's	

<p>participation. Our participation in this proceeding without an award of intervenor compensation would pose a significant financial hardship.</p>

ADMINISTRATIVE LAW JUDGE RULING

<p>1. The Notice of Intent (NOI) is untimely:</p> <p>A prehearing conference in this proceeding was held on April 26, 2016. Pursuant to § 1804(a)(1), the statutory deadline for filing NOIs was May 26, 2016. Defenders of Wildlife (Defenders) filed its NOI on July 6, 2016.</p> <p>PU Code §1804(a)(1) states:</p> <p style="padding-left: 40px;">A customer who intends to seek an award under this article shall, within 30 days after the prehearing conference (PHC) is held, file and serve on all parties to the proceeding a notice of intent to claim compensation. In cases where no prehearing conference is scheduled or where the Commission anticipates that the proceeding will take less than 30 days, the Commission may determine the procedure to be used in filing these requests. In cases where the schedule would not reasonably allow parties to identify issues within the timeframe set forth above, or where new issues emerge subsequent to the time set for filing, the Commission may determine an appropriate procedure for accepting new or revised notices of intent.</p> <p>Defenders sought party status and filed its NOI almost five months after this proceeding began and more than 60 days after the PHC was held. Defenders’ explains that the lateness in filing its NOI was “due to a proliferation of proceedings on similar and related topics at the time of [the] prehearing conference, and due to organizational staffing limitations...”</p> <p>The deadline and other provisions of §1804(a)(1) are statutory and may not be waived or extended by the Commission (Rule 1.2 permits deviations from the Commission’s Rules but only “within the extent permitted by statute”). Defenders’ reasons for filing this NOI late do not fall within any of permitted exceptions to the 30-day deadline, and therefore the NOI must be rejected.</p> <p>This ruling does not preclude Defenders of Wildlife from participating in this proceeding at its own costs.</p>	<input checked="" type="checkbox"/>

2. The Administrative Law Judge provides the following additional guidance
see § 1804(b)(2):



Because Defenders' NOI is rejected as untimely, this ruling does not consider the issues of customer status, significant financial hardship or the scope of the party's participation. However, I provide the following guidance, in the event another prehearing conference is held in this proceeding and Defenders timely files an NOI subsequent to that PHC, or if Defenders intends to seek intervenor compensation in other Commission proceedings.

Defenders asserts that it is a customer as defined in §1802(b)(1)(C). Pursuant to §1802(b)(1)(C), an organization that claims this customer category must be authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation. Environmental organizations representing customers who have a concern for the environment can also be found eligible under §1802(b)(1)(C).⁴

Defenders' bylaws state that the organization is:

...dedicated to preserving wildlife and promoting humane treatment of wild animals, emphasizing appreciation and protection for all species in their ecological role within the natural environment. Through communication, education, and responsive action, Defenders of Wildlife works to improve public attitudes and policies toward wildlife and its habitat. (Bylaws, Article II.)

These powers (to preserve, promote, communicate, educate, take responsive action and improve) do not equate with the specific authorization required by §1802(b)(1)(C) **to represent** residential or small commercial customers in legal proceedings. In the case of an environmental organization, its Articles or bylaws must specifically authorize it **to represent** environmental concerns in such proceedings (for example, before the courts or administrative agencies).⁵

IT IS RULED that:

1. The Notice of Intent filed by Defenders of Wildlife is rejected.



⁴ D.98-04-059 at 30.

⁵ See, D.98-04-059 at 30.

2. Defenders of Wildlife has not satisfied the eligibility requirements of Pub. Util. Code § 1804(a).	<input checked="" type="checkbox"/>
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Dated August 9, 2016, at San Francisco, California.

/s/ JULIE A. FITCH
Julie A. Fitch
Administrative Law Judge